

WEST VIRGINIA

Specific requirement to report sexual assault? No.

Requirement to report non-accidental or intentional injuries? No.

Requirement to report injuries caused by criminal conduct? No.

Additional statutes that may impact competent adult victims of sexual assault? No.

STATUTES ADDRESSING PAYMENT FOR EXAMINATIONS

W. Va. C.S.R. § 168-1-1. General.

1.1. Scope. -- This rule outlines procedures for paying the costs of forensic medical examinations for victims of sexual offenses from the forensic medical examination fund administered by the West Virginia Prosecuting Attorneys Institute. This rule is not intended to set standards for the conduct of a criminal investigation or to affect in any manner the admissibility of evidence.

1.2. Authority. -- W. Va. Code § 61-8b-18.

1.3. Filing Date. -- June 3, 2002.

1.4. Effective Date. -- July 3, 2002.

W. Va. C.S.R. § 168-1-3. Responsibilities of the Licensed Medical Facility.

3.1. In order to be eligible for and to receive reimbursement for conducting forensic medical examinations, a licensed medical facility must comply with the following procedures:

3.1.1. Each hospital performing medical examinations must use either the WV State Police Sexual Assault Kit or kits containing, at a minimum, the items contained in the WV State Police Sexual Assault Kit. Each hospital may order sexual assault kits free of charge from the WV State Police.

3.1.2. If an investigating officer is not present at the time the alleged victim arrives at the hospital, an investigating officer or local police agency should be contacted immediately through appropriate emergency channels.

3.1.3. Prior to conducting a forensic medical examination, the prosecuting attorney or assistant prosecuting attorney in the county where the alleged assault occurred must be notified and approve conducting a forensic medical examination. If the prosecuting attorney or assistant prosecuting attorney is not available, then approval must be obtained from the investigating officer or police agency. The hospital should keep on hand copies of the Forensic Medical Examination Fund Certification Form, available upon request from the Prosecuting Attorneys

Institute. The obtaining of consents included in the sexual assault kit and any additional consents which may be required by law is the responsibility of the hospital.

3.1.4. If possible, the forensic medical examination should be conducted by a physician, a sexual assault nurse examiner (SANE), a physician assistant working under the direct supervision of a physician, or an advanced practice nurse. Recognizing, however, that sensitivity to the needs of a victim of sexual assault may preclude delays in conducting the examination, payment will not be refused based on qualifications of the medical personnel performing the examination when the forensic medical examination is conducted by a licensed health care professional acting within the scope of practice at a licensed medical facility.

3.1.5. Hospital personnel should take note of any physical evidence, such as statements made by the alleged victim, as well as articles of clothing, etc. It is strongly recommended that the hospital preserve documents concerning this evidence and record the methods of collection.

3.1.6. After gathering the forensic evidence, the sexual assault kit shall be sealed and turned over to the investigating officer or police agency. Any and all other evidence collected by hospital staff shall also be turned over to the investigating officer or police agency.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit within a reasonable time of the date of examination an original invoice for the forensic medical examination to the prosecuting attorney in the county where the alleged offense occurred. The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. A second original invoice should be sent to the WV Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund. Reimbursement from the Fund is limited to \$350.00 for the cost of a forensic medical examination or, when that sum appears to be less than all reasonable, customary and usual costs of the forensic medical examination, a greater sum determined by resolution of the Executive Counsel of the West Virginia Prosecuting Attorneys Institute after consultation with providers and consideration of the limits of available funding. A licensed medical facility may not bill the victim of an alleged violation for costs of a forensic medical examination authorized and approved by a Prosecuting Attorney, investigating officer or police agency.

W. Va. C.S.R. § 168-1-4. Responsibilities of Law Enforcement Agencies.

4.1. The investigating officer or law enforcement agency is responsible for the following duties:

4.1.1. The investigating officer should inform the victim upon arrival at the hospital that the Forensic Medical Examination Fund will pay for the cost of the forensic medical examination if the examination is conducted as part of a criminal investigation. The investigating officer need not secure a victim's agreement to pursue prosecution of the case as a condition of obtaining the examination. Payment from the fund may not be refused for the reason that the victim later fails or refuses to cooperate in a criminal prosecution.

4.1.2. The investigating officer is responsible for contacting the prosecuting attorney or

assistant prosecuting attorney in the county where the alleged offense occurred in order for the prosecutor to approve conducting the forensic medical examination.

4.1.3. When the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred is unavailable to give approval to the hospital to conduct a forensic medical exam, the investigating officer may give approval for the administration of the exam. If the investigating officer approves the exam, that officer must complete and sign the Forensic Medical Examination Fund Certification Form.

4.1.4. Regardless of who initially approves the examination, the prosecuting attorney in the county where the alleged offense occurred must sign the certification form for payment to be authorized. Therefore, the investigating officer must send a certification form signed by the officer or police agency to the appropriate prosecuting attorney. An investigating officer may transmit a signed form by fax.

4.1.5. Upon completion of the forensic medical exam, the investigating officer is responsible for promptly transferring all evidence to the WV State Police Crime Laboratory in South Charleston, West Virginia for evaluation.

W. Va. C.S.R. § 168-1-7. Limitations on Use of Fund.

7.1. A licensed medical facility performing a forensic medical examination must conduct the exam within a reasonable time of the alleged sexual assault in order to be eligible for reimbursement from the Fund. Generally, in order to obtain usable evidence, a reasonable time is as soon as possible and should not exceed seventy-two (72) hours after the time of the alleged assault. If, however, in the judgment of the prosecuting attorney or law enforcement officer, special circumstances exist and the forensic examination should be authorized and conducted even after the passage of seventy-two hours, the judgment of the prosecuting attorney or law enforcement officer will determine whether the time elapsed after the alleged assault is reasonable. This section does not impose any time limitation within which a licensed medical facility must bill in order to obtain reimbursement from the fund.

7.2. Medical exams are primarily restricted to the collection of forensic evidence.

7.3. The West Virginia Forensic Medical Examination Fund covers only the cost of forensic medical exams. The Fund does not cover the cost of any treatment of injuries, pregnancy prevention or additional testing for pregnancy or sexually transmitted diseases.

W. Va. Code § 61-8B-15. Creation of a forensic medical examination fund

There is hereby created "The Forensic Medical Examination Fund" created as a special fund in the state treasury into which shall be deposited the appropriations made to the fund by the Legislature. Expenditures from the fund shall be made by the West Virginia prosecuting attorneys institute, created by the provisions of section six [§ 7-4-6], article four, chapter seven of this code, for the payment of the costs of forensic medical examinations as they are defined in

section sixteen [§ 61-8B-16] of this article and for the reimbursement to the institute of its expenses in administering the payment of the costs from the fund.

HISTORY: 1996, c. 105.

W. Va. Code § 61-8B-16. Payment for costs of forensic medical examination

(a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund the cost of the forensic medical examination for this person on the following conditions and in the following manner:

(1) The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;

(2) The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund;

(3) The forensic medical examination must have been conducted within a reasonable time of the alleged violation;

(4) The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;

(5) The licensed medical facility shall submit a statement of charges to the prosecuting attorney in the county in which the alleged offense occurred and the prosecuting attorney shall certify, if proper, that the forensic medical examination was conducted as a part of a criminal investigation; and

(6) The prosecuting attorney shall, within sixty days of receipt of a statement of charges from the licensed medical facility, forward the statement of charges and the certification to the West Virginia prosecuting attorneys institute for payment from the fund and for the reimbursement of the institute from the fund for the reasonable costs of processing and recording the payment.

(b) No licensed medical facility may collect the costs of a forensic medical examination from the victim of an alleged violation of this article if the reasonable, customary and usual costs of the forensic medical examination qualifies for payment from the forensic medical examination fund as set forth in subsection (a) of this section.

HISTORY: 1996, c. 105; 1999, c. 219.

REPORTING STATUTES WHICH MAY IMPACT RAPE VICTIMS

W. Va. Code § 61-2-27. Required reporting of gunshot and other wounds

(a) Any medical provider who provides medical treatment to a person suffering from a wound caused by a gunshot or a knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe resulted from a violation of the criminal laws of this state, shall report the same to a law-enforcement agency located within the county within which such wound is treated. The report shall be made initially by telephone and shall be followed by a written report delivered to such agency within forty-eight hours following the initial report: Provided, That where two or more persons participate in the medical treatment of such wound, the obligation to report imposed by this section shall apply only to the attending physician or, if none, to the person primarily responsible for providing the medical treatment.

(b) Any medical provider person who in good faith reports a wound described in subsection (a) of this section shall be immune from any civil liability which may otherwise result solely from reporting the same.